

203.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-37956-2016

Date of decision:06.07.2018.

VISHAL SAINI

... Petitioner

versus

ASHOK KUMAR & ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Rajesh Gupta, Advocate,
for the petitioner.

None for respondent No.1.

Mr. Ramesh Kumar Ambavta, AAG, Haryana,
for respondent No.2.

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present petition under Section 482 Cr.P.C. for quashing the orders dated 28.03.2016 (Annexure P-3), 11.05.2016 (Annexure P-4), 14.07.2016 (Annexure P-5), 22.08.2016 (Annexure P-7), whereby he has been declared proclaimed person and FIR under Section 174-A IPC was ordered to be registered against him.

Learned counsel for the petitioner has stated that in a complaint filed by respondent No.1-complainant under Section 138 of Negotiable Instruments Act, 1881, learned trial Court issued bailable warrants against the petitioner. The trial Court vide order dated 15.02.2016 had recorded that the bailable warrant issued against the petitioner-accused received back unexecuted with the report of incorrect address. The trial Court directed for

issuance of bailable warrant again for 28.03.2016 on filing of fresh address.

As directed by the trial Court vide order dated 15.02.2016, fresh address was not furnished by the respondent-complainant. Accordingly, the trial Court passed the following order:-

“Bailable warrant to the accused not issued for want of fresh address. It is relevant to mention that case is pending since long and the accused was ordered to be summoned by way of ordinary process as well as through bailable warrant. This court is of the view that the accused has either absconded or is concealing himself so that such bailable warrant cannot be executed. Let the accused be summoned through warrant of arrest for 11.05.2016.”

Finally, the Court passed the order dated 22.08.2016 whereby while declaring the petitioner as proclaimed person, the SHO was directed to register an FIR under Section 174-A IPC. The order dated 22.08.2016 reads as under:-

“Today the case was fixed for appearance of the accused. Case called several times since morning but none has appeared on behalf of the accused. It is already 3:45 P.M. Further wait is not justified. Hence, the accused is declared to be proclaimed person. Intimation be also sent to the concerned SHO with the direction to register FIR u/s 174-A IPC under intimation to this court in this regard. The evidence under Section 299 Cr.P.C. is closed by the court order. In view of the statement made above, file be consigned to the record room being sine die with the red ink note that the same would not be destroyed and be taken up as and when the accused is arrested or himself surrenders. A red ink note be made on the cover note of the file.”

Learned counsel for the petitioner has argued that in fact the

dated 28.03.2016. The order dated 28.03.2016 runs contrary to the record. The Court has observed that bailable warrant could not be issued to the accused for want of fresh address, but at the same time, it has observed that the petitioner-accused has either absconded or is concealing himself. He has further argued that in the pending criminal complaint under Section 138 of Negotiable Instruments Act, he had surrendered before the trial Court on 15.10.2016 and is facing the trial.

Learned State counsel has stated that the petitioner was aware of the proceedings but still avoided appearance. Therefore, there is no illegality in the order.

I have heard learned counsel for the parties.

This Court finds that the order dated 28.03.2016, reproduced above, carries inherent contradictions. The trial Court has observed that bailable warrant to the accused not issued for want of fresh address but in the order, the Court has formed an opinion that the accused has either absconded or is concealing himself so that bailable warrant cannot be executed.

Considering the judgment passed by this Court in **Rajneesh Khanna Versus State of Haryana and another-2017(3) L.A.R. 555** and another judgment passed in CRM-M-5895 of 2012 titled as “**Raj Kumar Versus State of Haryana**”, decided on 13.09.2012, this Court finds that the impugned order declaring the petitioner as proclaimed person and directing the SHO to register FIR is not sustainable, as the petitioner was not served in the case because of non-furnishing of the correct address by the respondent.

Accordingly, the present petition is allowed. The order dated 22.08.2016 declaring the petitioner as proclaimed person is set aside. Resultantly, the FIR so registered under Section 174-A IPC against the petitioner is also quashed.

(HARI PAL VERMA)
JUDGE

06.07.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No